IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL REVISION APPLICATION NO.569 OF 2007

Smt. Zohrabi M.A. Dalvi & Ors. ...Applicants.
v.
Smt. Sarifabi Abubaker Lambay & Anr. ...Respondents.

Mr.Javed Hussein, adv. for the Applicants.
Mr.V.Y.Sanglikar, adv. for the Respondent Nos.1 and 2.

CORAM: J.H.BHATIA,J.
DATE: 13th December,2007.

P.C.

1. Revision Applicants are the legal heirs of the deceased defendant/Amin Abdul Kader Dalvi. The respondent no.1, who claims to be the landlady filed the suit for eviction against the defendant on the ground that he was inducted in the suit premises as tenant on monthly rent of Rs.50/-. He had not paid the rent from 1-4-1983 to 31-8-1984 that is for a period of more than six months and, therefore, on 23rd August, 1984, notice was issued to him to pay arrears of rent and also the tenancy was terminated. Neither that notice was replied nor the arrears of rent were paid. Therefore, the respondent no.1 filed the suit for eviction.

2. The defendant filed written statement in March, 1985 wherein he contended that the suit premises, being room no.3, is situated in a chawl, which originally

belonged to one M/s. Mirchandani and Mirchandani. That property was sold by M/s. Mirchandani to one Malbari. Mr.Abubaker Dawood Lambay, the husband of the respondent no.1 was a rent collector of that Malbari. After the death of said Malbari, Abubakar Dawood Lambay represented himself to be the owner of Mirchandani Chawl No.2 and 4 and forced the tenants to pay the rent to him. In paragraph 3 of the written statement, the defendant further said that Suit premises being Room No.3 was given to the defendant on monthly rent of Rs.50/- in the month of May, 1976 by the said Abubaker Dawood Lambay who is the husband of the plaintiff/respondent no.1. In the written statement title of the plaintiff/respondent no.1 was disputed and it was contended that her husband had inducted the defendant as tenant. In view of this objection, the said Abubaker was also impleaded as the plaintiff no.2 and he is the respondent no.2 before this Court.

3. Before the trial Court evidence was led by the plaintiff that the plaintiff no.1 Sharifabi was the owner of the property. She had purchased the property under the sale deed and her husband was managing the property and was acting as a rent collector and he had on behalf of the landlady inducted the defendant as tenant. Before the trial Court, documents were also produced to show that though the original sale deed was not registered, confirmation deed was got registered in

the year 1992 pending the suit. In view of the evidence on record, the learned trial Court found that the defendant was the tenant of the plaintiff Sharifabi. He had failed to pay the rent for more than six months and was arrears of rent. In spite of notice, he had failed to pay arrears of rent within one month and, therefore, the plaintiff is entitled to decree for eviction. Judgment was challenged by the legal representatives of the deceased/defendant in Appeal No.726 of 2003. The appeal also came to be dismissed. There are concurrent findings of the facts about the relationship as landlady and the tenant between plaintiff and defendant as well as failure of the defendant to pay the rent. There is also concurrent finding that there was arrears of rent for more than six months and he had failed to pay the amount of arrears of rent within one month after the service of notice.

4. In the revision, the learned counsel for the revision applicants/legal heirs of the original defendant tried to contend that plaintiff did not have title over the suit property. However, I find that having admitted in the written statement that in 1976 the defendant was inducted as tenant by the husband of the plaintiff no.1 and when it is proved that he was acting as rent collector or agent on behalf of the wife, the defendant was estopped under Section 116 of the Evidence Act to challenge the title of the landlady.

5. Therefore, I find no substance in the present revision.

6. In the result, the Revision application stands dismissed.

7. At this stage, the learned counsel for the revision applicants makes a request that the Applicants may be given reasonable time to vacate the premises and the applicants will also file undertaking to the effect that they shall deposit arrears of rent within one month and and shall not create any third party interest and without any obstructions shall give vacant possession and hand over the same to the plaintiff. In view of this in the interest of justice, subject to filing undertaking within four weeks from this day that the applicants shall vacate the premises and hand over the peaceful vacant possession of the suit property to the plaintiff by the end of April, 2008 and shall also deposit arrears of rent within one month from this day the decree for eviction shall not be executed till end of April, 2008. Failing to deposit arrears of rent or failing to file undertaking within stipulated time, the plaintiff shall be at liberty to execute the decree. If

the amount of arrears of rent is deposited by the defendants, the plaintiffs shall be at liberty to withdraw the same.

(J.H.BHATIA,J.)